

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9171 of 2000

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

FATMABEN ISMAILBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9171 of 2000
MR AS SUPEHIA for Petitioner No. 1
MR MR MENGEDEY Ld. AGP for Respondent No. 1-3
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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 17/08/2004

ORAL JUDGEMENT

1. The petitioner a retired Government servant, claims right to receive pension.

2. The petitioner came to be appointed as daily wage labourer in the year 1960. She continued to work as such till January, 1987. On 15th January, 1987 the petitioner was absorbed in work charge establishment. On reaching the age of superannuation she was retired from service on 30th November, 1993. Since her retirement she claimed benefit of pension. The said claim has been denied, therefore, the present petition.

3. It is a common ground that the petitioner was daily wage labourer for the period from 1960 to 1987. Her service on the work charge establishment from 16th January, 1987 to 30th November, 1993 is pensionable service. However, since the petitioner did not complete 10 years' pensionable service, she is not given the pension. Learned advocate Mr. Supehia has relied upon the judgments of this Court in the matters of Husainbhai Nanubhai Quareshi vs. State of Gujarat, (Special Civil Application No. 3243 of 1996, decided on 9th April, 1999; Coram: S.K. Keshote, J.), of Tribhovanbhai Jerambhai vs. Dy. Executive Engineer, (Special Civil Application No. 5623 of 1997, decided on 31st March, 1998, Coram: R. Balia, J.); of Chhaganbhai Ranchhodbhai Rathod vs. Dy. Executive Engineer, (Letters Patent Appeal No. 1495 of 1997, decided on 6th August, 1998; Coram: Mr. K.G. Balakrishnan, C.J. & J.M. Panchal, J.); of Karshanbhai Vastabhai Bhasker vs. State of Gujarat, (Special Civil Application No. 2836 of 1998, decided on 27th August, 1998, Coram: K.R. Vyas, J.) of Devubha Tejubha vs. State of Gujarat, (Special Civil Application No. 9242 of 1998), decided on 5th May, 2000 Coram: R.R. Tripathi, J.), of Karshanbhai Vaghjibhai Vaghela vs. State of Gujarat, (Special Civil Application No. 2374 of 2001, decided on 7th August, 2001, Coram: P.B. Majmudar, J.) and of Ismail Ibrahim vs. Executive Engineer, (Special Civil Application No. 6284 of 1999, decided on 26th August, 2003, Coram: H.K. Rathod, J.). He has submitted that if the pensionable service is preceded by non-pensionable service, period of such non-pensionable service shall be considered to be qualifying service for the purpose of pension.

4. In the matter of Govindbhai Madhavbhai Vaghela vs. Director, Pension & P.F. & Anr. (2004(1) G.L.H., p. 129,) a similar petition came up for hearing before me. In paragraph-15 of the judgment, it was held that :

"15. In my view, a daily wager cannot be said to be holding a post in the state government (State of Haryana and another v. Tilak Raj and others;

AIR 2003 S.C. 2658) nor does he hold a lien on such post. Besides, the daily wagers are paid from contingencies and not from the consolidated fund of the State. In view of the above referred statutory rules services rendered as daily wage employee cannot be treated as pensionable service nor can such service be counted for computation of pension. Hence, the service rendered by the petitioner on daily wages prior to 15th January, 1987 cannot be considered pensionable. Since 15th January, 1987 the petitioner has not completed ten years' service. He is, therefore, not entitled to pension as claimed by him."

It was also observed that in the aforesaid judgments, (now relied upon by Mr. Supehia) the statutory provisions were not brought to the notice of the concerned Bench. Considering the decision in the said judgments, it was held in paragraph-17 as under:

"17. The upshot of the aforesaid decision is that non-pensionable service (service rendered as daily wage labourer) rendered immediately preceding the pensionable service (service rendered on work charge establishment or deemed to be permanent service by virtue of the benefit conferred under the Resolution dated 17th October, 1988) has been ordered to be treated as pensionable service for the purpose of computation of pension. This being the view consistently followed by this Court since the year 1998 or even therefore there is no reason why similar benefit should be denied to the present petitioner."

5. Following the above referred judgments, the present petition is allowed. The service rendered by the petitioner as daily wage employee prior to 16th January, 1987 shall be considered pensionable. The respondents are directed to compute the pension which shall be due and payable to the petitioner if all the completed years of service as daily wage labourer were considered to be pensionable service along with the service rendered in work charge establishment and to issue pension payment order. The petitioner shall be paid pension regularly every month from 1st January, 2005. The arrears of pension from the date of retirement from the service till

31st December, 2004 shall be paid on or before 30th April, 2005. As I am of the opinion that under the relevant rules the petitioner is not entitled to pension the claim for interest is rejected. Rule is made absolute to the above extent. The parties shall bear their own cost.

(Ms. R.M. DOSHIT, J.)
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